



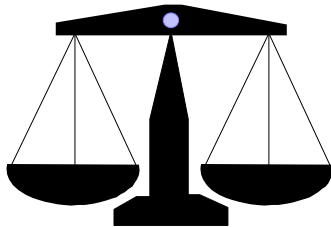
Access and Fairness Advisory Committee

Judicial Council of California Administrative Office of the Courts

Q & A ON RULE OF COURT 989.3 REQUESTS FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES

Introduction

The Q & A on California Rules of Court, rule 989.3 was developed by members of the Judicial Council Advisory Committee on Access and Fairness. The committee prepared this document in order to respond to the most frequently asked questions about the rule. These questions and answers are the first in a series being prepared to inform court personnel and the public about the rule.



The Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 et seq.) is a federal civil rights statute that requires all state and local governmental entities, including the courts, to accommodate the needs of persons with disabilities who have an interest in court activities, programs, and services. The ADA also requires the government to modify programs to integrate persons with disabilities, eliminate discriminatory practices or procedures, and provide alternatives to communications limitations and differences.

Presently, some 16 percent of working-age Californians, or approximately 4.7 million people, are estimated to have a disability.¹

California Rules Of Court, rule 989.3 seeks to provide a workable and orderly framework for compliance with the ADA and state laws. The rule provides the mechanism for lawyers, parties, witnesses, jurors, and any other persons with disabilities to request accommodations **in confidence** and directly to a designated court clerk, employee, or an appropriate judicial officer.

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1. Who Is Entitled to Receive an Accommodation?

Rule 989.3, subdivision (b)(1) states that “[q]ualified individuals with disabilities... in

¹ Estimate of persons with disabilities age 15–64 in California is from a report entitled *Americans with Disabilities: 1991–92*, published December 1993 by the U.S. Dept. of Commerce, Bureau of the Census.

includes individuals who have a physical or mental impairment that substantially limits one or more of the major life activities; have a record of such an impairment; or are regarded as having such an impairment.”

Anyone with a disability who has business with the courts, including public observers of court activities or sessions, is entitled to receive an accommodation. A major life activity includes caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working. Some examples of disabilities include mobility or other motor impairments, psychological and mental illness, vision impairments, hearing impairments, and environmental sensitivities.

2. What Kind of Showing of the Disabling Condition Must an Applicant for an Accommodation Provide?

Rule 989.3, subdivision (c)(2) states the following: “[t]he court, in its discretion, may require the applicant to provide additional information about the qualifying impairment.”

Rule 989.3 does not require a showing. Federal statutes and regulations do not specify the nature of a showing needed to confirm the existence of a disabling condition requiring an accommodation. The individual reviewing the accommodation request may have questions about the designated impairment or the appropriateness of the accommodation. In these rare instances, the court may, in its discretion, request that the applicant provide additional information about the disabling condition or the effectiveness of the requested accommodation. However, the court and its personnel should be careful not to place undue burden on the applicant. Information about the qualifying impairment might include a doctor's letter, a docu-

ment from a public agency, or other means deemed reliable by the court.

3. Does Rule 989.3 Require an Evidentiary Hearing on Request for Accommodation?

No. The process is purely administrative and does not call for a hearing. Rule 989.3, subdivision (c)(1) states that “[a]pplications requesting accommodation(s) pursuant to this rule may be presented *ex parte* in writing....”

If the request is made by a litigant, counsel, or witness for a party, neither the rule nor federal laws or regulations authorize third parties to interfere with the request for an accommodation. All applications for accommodations should be made on the Judicial Council–approved application, Form MC-410, and shall include a description of the accommodation sought, along with a statement of the impairment that necessitates such accommodation. The court, in its discretion, may require the applicant to provide additional information about the qualifying impairment.

Note: The mechanism for requesting the accommodation pursuant to rule 989.3 is not an adversarial process.

4. Do Court Personnel Have to Guess About the Type and Nature of the Accommodation Required?



No. Although the courts have an obligation to inform the public generally of the availability of

accommodations, if no request for an accommodation is made, the court need not provide one. The court is encouraged to ask the person with the disability to suggest an accommodation.

Federal regulations state that “[i]n determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities” (28 C.F.R. § 35.160 (b)(2).)

The court, therefore, is not prohibited from offering an accommodation on its own. The court is not required to provide the best accommodation, but rather an effective accommodation.



5. What Kind of Accommodations May the Courts be Required to Provide?

Rule 989.3, subdivision (b)(3) defines accommodations as “making reasonable modifications in policies, practices and procedures; furnishing, at no charge, to the qualified individual with disabilities, auxiliary aids and services, which are not limited to equipment, devices, materials in alternative formats and qualified interpreters or readers.”

Accommodations must address diverse disabilities, which can vary in nature and degree from person to person. Accordingly, the type of accommodation granted can vary from person to person. Some examples of the type of accommodations that may be provided include but are not limited to the following:

- Schedule changes to accommodate accessible public transportation, medication schedules, or other time-sensitive needs;
- Additional time for a litigant with a disability to respond to court deadlines;
- Someone to read or assist with filling out forms for persons with visual, manual dexterity, cognitive, or other disabling conditions;



- Telephonic hearings for people who have environmental sensitivities, mobility, or other limitations; and
- Assistive-listening systems, sign-language interpreters, real-time captioning, written material on computer-readable disk, telecommunication devices for the deaf (TTY), reader services, etc.

6. Who Is Responsible for Providing Forms in Braille, Real-Time Transcription, as Well as Other Accommodations?



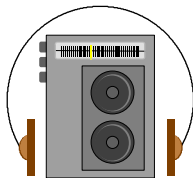
Federal regulations state that “[a] public entity shall furnish appropriate auxiliary aids and

services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity conducted by a public entity” (28 C.F.R. § 36.160 (b)(1)).

The court is responsible. Persons with disabilities should not pay more for access to the courts and court services, programs, and activities than persons without disabilities.

7. May the Court Suggest Alternative Accommodations?

Yes. As discussed in question #4 above, nothing prohibits the courts from suggesting other means of accommodation to the applicant as alternatives to the requested one.



For example, if a juror is blind and requests written material introduced at trial to be transcribed in Braille, the court may also consider whether providing a reader or tape-recorded transcripts of the written material, as an alternative, would be effective.

8. If a Request for Accommodation Seems Too Intrusive on Court Time and Court Management, May the Court Summarily Deny the Request?

No. Rule 989.3, subdivision (f)(1) through (3) states that “[a]n application for accommodation may be denied only if the court finds that (1) the applicant has failed to satisfy the requirements of this rule; (2) the requested accommodation

tion(s) would create an undue financial or administrative burden on the court; or(3) the requested accommodation(s) would fundamentally alter the nature of the service, program or activity.”

Ignoring or summarily denying requests is inappropriate under the rule. An applicant whose accommodation request is denied can seek immediate review from the appropriate reviewing court by extraordinary writ, and can bring an action for injunctive relief in state or federal court to compel consideration of the accommodation request.

9. What Happens if a Case is Set for Trial and a Party or Their Attorney Uses a Wheelchair and There are No Restrooms Available in the Courthouse that are Useable by Someone in a Wheelchair?



The case should not proceed until facilities are made available. For example, alternate, accessible restroom facilities that are available within the courthouse such as in jury rooms, court chambers, or other administrative areas of the court may be offered. The case may also be transferred to another courthouse or branch that has suitable facilities.

10. Should Proceedings Stop if There Is a Witness That Needs an Accommodation That Is Not Available?

No. The court is not prohibited from proceeding with other witnesses or matters until the needed accommodation is available.

The court is responsible for providing all accommodations needed by individuals, including witnesses who use court facilities and services. For example, all courts should have a list of qualified interpreters and readers for persons who are deaf or blind. Technological equipment should be available including assistive-listening systems, printed-matter in Braille, tape recordings, computer disks, real-time captioning, and other enhanced-communications methods.

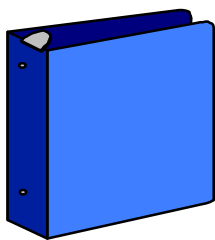
Please note

These questions and answers are the first in a series being prepared to inform persons about rule 989.3 and Form MC-410, "Requests for Accommodations by Persons with Disabilities," which were adopted by the council and became effective January 1, 1996.

The Judicial Council of California provides policy direction to the courts, the Governor, and the Legislature concerning court practice, procedure, and administration. As its staff agency, the Administrative Office of the Courts provides support to the council.

RESOURCES AVAILABLE

Reports



The Access and Fairness Advisory Committee has just completed a multiphase research program to document perceptions and experiences of persons with and without disabilities who have had, and continue to have, business with

*the courts. The research program consisted of public hearings, a telephone survey, a mail survey, and qualitative interviews. The results and analysis of this research program are available in two separate reports, titled **Public Hearings Report: Access for Persons with Disabilities** and **Access to the California State Courts: A Survey of Court Users, Attorneys and Court Personnel**.*

U.S. Department of Justice/ADA Homepage

Full text of the Americans With Disabilities Act (ADA) (42 U.S.C. § 12101 et seq.) is located at: <http://gopher.usdoj.gov/crt/ada/statute.htm1>.

The ADA homepage (a part of the U.S. Department of Justice site) is located at: <http://www.usdoj.gov/crt/ada/adahom1.htm>.

JIBBS

*See **California Rules of Court, Rule 989.3: The Guideline for Accommodating Persons with Disabilities in California Courts**. This is a position paper that was presented by G.R. Overton of the California Department of Justice to the Los Angeles County Municipal Court Judges Association in 1996. This paper (labeled **CRC989.wp**) can be found, in its entirety, and downloaded from the JIBBS system's "forum" option.*



Questions

We invite additional questions be submitted by fax to Arline Tyler, Senior Attorney Administrative Office of the Courts (415)396-9358.

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